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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
Before The Honorable Sallie Kim, Magistrate Judge

MECHANICAL CONTRACTORS )  
ASSOCIATION OF MEMPHIS, INC., )  
et al., )  
Plaintiffs, )  
vs. ) No. 19MC80226-SK  
SHELBY COUNTY, TENNESSEE, )  
et al., )  
Defendants. )

San Francisco, California  
Monday, December 9, 2019

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND  
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APPEARANCES:

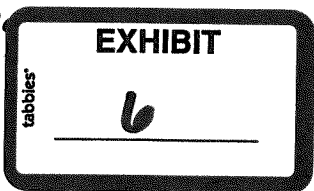
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1 Monday, December 9, 2019

10:02 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Calling civil case 19-MC-80226,  
5 Mechanical Contractors Association of Memphis, Inc., et al.,  
6 versus Mason Tillman Associates, Limited.

7 Counsel, please state your appearances, beginning with  
8 those in the courtroom.

9 MR. LEVERONI: Good morning. Joe Leveroni,  
10 Murphy, Pearson, Bradley and Feeney, local counsel for  
11 Petitioner.

12 THE COURT: Good morning.

13 MS. BURTON: Jocelyn Burton here for Mason  
14 Tillman.

15 THE COURT: Good morning.

16 And on the telephone?

17 MR. BRAGORGOS (Telephonic): Nick Bragorgos,  
18 McNabb, Bragorgos, Burgess and Sorin on behalf of Shelby  
19 County.

20 THE COURT: Okay. Good morning.

21 MR. BRAGORGOS: Mechanical Contractors  
22 (indiscernible) Shelby County. Excuse me.

23 THE COURT: Thank you.

24 So Ms. Burton, let me just ask you a question up front,  
25 and that is, does MTA agree to transfer to the Western

1 District of Tennessee -- because there was response in your  
2 opposition brief about their motion to transfer under Rule  
3 45?

4 MS. BURTON: We -- we don't -- we don't agree with  
5 that.

6 THE COURT: Okay, all right. Why didn't you  
7 address that in your brief? I'm kind of puzzled that it  
8 wasn't -- you didn't mention anything about it.

9 MS. BURTON: Well we were busy trying to get --  
10 deal with the documents at the --

11 THE COURT: Okay.

12 MS. BURTON: Yeah.

13 THE COURT: Mr. Bragorgos, let me ask a question.  
14 You've asked for attorney's fees and costs, but you haven't  
15 given me the amount that you've already incurred. Is there  
16 a reason why you didn't include that in your opening papers?

17 MR. BRAGORGOS: That's an oversight on my part,  
18 Judge. That's all.

19 THE COURT: Okay. The problem is that I'm not  
20 going to grant a motion for attorney's fees and costs  
21 without actually seeing the amount and giving the other side  
22 an opportunity to respond. I will tell you that no matter  
23 what the decision is, I'm going to make MTA pay for those  
24 attorney's fees and costs that were incurred, because you  
25 had to show up in person, there was no response and you had

1 to have travel costs and show up for the deposition and pay  
2 the court reporter and things like that.

3 But I'm going to have to have you submit something  
4 specifically so that MTA has due process and the ability to  
5 look at the numbers and say whether or not they think that  
6 they're going to actually -- whether they think that they  
7 are reasonable for the situation.

8 So just to let me know, that's the process I'm going to  
9 have for the attorney's fees and costs, associated with  
10 coming here in person to try to take the -- enforce the  
11 subpoena.

12 MR. LEVERONI: That's understood. One point of  
13 clarification. We included in an affidavit submitted with  
14 the reply --

15 THE COURT: Okay.

16 MR. LEVERONI: -- the -- this is MCA's reply --

17 THE COURT: Okay.

18 MR. LEVERONI: -- in support of the motion to  
19 compel. It is my declaration.

20 THE COURT: Yes, okay.

21 MR. LEVERONI: And at the end it includes the  
22 figures for both Mr. Bragorgos and myself.

23 THE COURT: Okay, okay. I see this. So what --  
24 let me make sure I have this correctly. So again, bringing  
25 up something in reply doesn't give the other side a chance

1 to respond to it, so that's why I'm going to give them a  
2 chance to respond.

3 MR. LEVERONI: Understood.

4 THE COURT: But let me look at those numbers for a  
5 minute. Paragraph five, "Tennessee Counsel, 16 hours,  
6 travel to San Francisco costs." So that's the number there  
7 for paragraph five; right?

8 MR. LEVERONI: Yes.

9 THE COURT: And paragraph six, Mr. Leveroni, this  
10 is your costs and fees?

11 MR. LEVERONI: Yes.

12 THE COURT: That's the part I'm not sure I'm going  
13 to enforce, but the part for Mr. Bragorgos, I will.

14 MR. LEVERONI: Understood.

15 THE COURT: But Ms. Burton, I will give you an  
16 opportunity to respond to it.

17 MS. BURTON: Okay.

18 THE COURT: Because it's clear that he came here  
19 because there was no response from MTA thinking that he  
20 should be able to take a deposition and get the documents  
21 and no one told him otherwise. Okay.

22 So how much time, Ms. Burton, do you want to respond to  
23 that?

24 MS. BURTON: Could I have at least a week?

25 THE COURT: Yeah, sure. I'll give you until

1 December 16th.

2 MS. BURTON: Okay.

3 THE COURT: So Ms. Burton, does MTA concede that  
4 service was valid?

5 MS. BURTON: Well it's unclear whether service was  
6 valid. I know that -- I mean there is an issue -- there --  
7 they left it on the desk with the law clerk, with an intern.  
8 She was not authorized to accept service, but I don't know  
9 if she notified them whether she was authorized to accept  
10 service.

11 THE COURT: So let me put the question in a  
12 different way. You don't have any specific facts in  
13 evidence before me to contest the validity of service; is  
14 that correct?

15 MS. BURTON: Well the only thing we did explain is  
16 that it was left with the law clerk and that's what we --  
17 that's all I know.

18 THE COURT: Okay. All right. So my take on that  
19 is that that's not sufficient -- those aren't sufficient  
20 facts to contest service. There's no law showing to me that  
21 that's incorrect service. I have no reason to believe it's  
22 invalid. So I'm -- based on what I have before me, I find  
23 that the service was valid.

24 MS. BURTON: Okay.

25 THE COURT: Okay. So Mr. Bragorgos, let me ask

1 you a question about the underlying litigation. Is there a  
2 protective order in place in that Tennessee litigation?

3 MR. BRAGORGOS: No, Judge, there is not. We are  
4 certainly willing to enter into one to make that very clear,  
5 but at this time there is not.

6 THE COURT: Okay. So I would direct the parties  
7 to look at the model stipulated protective order of the  
8 Northern District of California. Because in that situation,  
9 we have a model order. We have two versions. One is just  
10 confidentiality, one is attorney's eyes only when there are  
11 competitors involved. I don't think there are competitors  
12 involved in this case, but I don't know enough about the  
13 underlying case to know whether there are competitors or  
14 not.

15 But I would tell you that my default position is to  
16 allow some kind of protective order. Even if I have a  
17 protective order here, the (indiscernible) information is  
18 disclosed to the moving party. It would be under the terms  
19 of that model protective order, unless I hear that there's a  
20 competitor involved.

21 So someone tell me, Ms. Burton, do you think there's a  
22 competitor involved?

23 MS. BURTON: Well yes, there will be -- probably  
24 -- competitors involved, because they will -- this is a very  
25 -- this is an industry in which there are very few active



1 players. Ms. Ramsey informed me that there are  
2 approximately 10 organizations --

3 THE COURT: She said nine in her declaration.

4 MS. BURTON: Nine, nine. That do these studies.

5 THE COURT: right.

6 MS. BURTON: And generally what will happen is the  
7 escorts will be one of those other nine competitors.

8 And I think -- what we didn't put in the brief, because  
9 we hadn't done it yet. We produced almost 6000 pages of  
10 documents to them. The only --

11 THE COURT: When was the production made?

12 MS. BURTON: About a week after the -- we filed  
13 our brief.

14 THE COURT: I see.

15 MS. BURTON: On about November 14th.

16 THE COURT: Okay.

17 MS. BURTON: So there are only two remaining  
18 classes of documents which we have concerns about, and one  
19 are the documents pertaining to the identity of some people  
20 who may have provided information regarding the anecdotal  
21 survey evidence. And two, is information that is  
22 proprietary. And those include things like internal manuals  
23 regarding how to do the interviews, templates for drafting  
24 documents. Those types of things.

25 THE COURT: Okay. Let me ask Mr. Bragorgos. Mr.

1 Bragorgos, are there any competitors involved in this case?

2 MR. BRAGORGOS: No. Absolutely not.

3 THE COURT: Are your expert witnesses drawn from  
4 competitors of MTA?

5 MR. BRAGORGOS: No. My expert witness is a man  
6 named George Lanoud, L-A-N-O-U-D.

7 THE COURT: Okay. Can you spell that again?

8 MR. BRAGORGOS: L-A-N-O-U-D. He's a professor at  
9 the University of Maryland and he has appeared at  
10 depositions. Our expert deadline has not come yet, but we  
11 have no intention of retaining, under the company, that may  
12 be considered a competitor. There are no competitors  
13 involved in this case. It's a two-party case. It's my  
14 client, Mechanical Contractor and it's versus Shelby County.  
15 And no, I don't see any scenario where a competitor will  
16 ever be involved in this case.

17 THE COURT: Okay. So let me tell me what I'm --  
18 what I'm planning to do. I think that MTA actually  
19 technically waived its objections under Rule 45, because it  
20 didn't file them in a timely manner. But I am considering  
21 this issue of confidential materials and it sounds like, Mr.  
22 Bragorgos, that you are willing to have some kind of  
23 confidentiality order and I would say that the order that  
24 the order that I will put into place, for the production of  
25 MTA documents, it's just the standard civil protective order

1 that's on the website for the Northern District of  
2 California. I don't know if you're familiar with it, or if  
3 you've seen it, but this is pretty much what we do. And I  
4 wouldn't have an attorney's eyes only designation.

5       There are two kinds of protective orders. One is just  
6 a standard civil one, and one is for competitor information  
7 with an attorney's eyes only designation. In this case it  
8 sounds like just a standard order is the right one.

9       What I'll also say to you though, Ms. Burton, is to the  
10 extent that MTA doesn't like that, or wants to contest that,  
11 once you get into -- once the material is produced to the  
12 other side, if you want to ask the court in Tennessee to  
13 provide additional protections, for example, let's say that  
14 Mr. Bragorgos does go out and find someone who is a straight  
15 up competitor as an expert witness later on, then you're  
16 certainly within your rights to go to Tennessee and ask them  
17 to give them -- give you additional protection over your  
18 materials. But there will be production and it will be  
19 under some kind of protective order.

20       So I'm going to give you the option of taking a look at  
21 that order, and then letting me know also by January -- by  
22 December 16th whether or not you agree to it, or whether you  
23 have any changes that you want to make. It's a one size  
24 fits all. It works pretty well for most cases, but every  
25 once in awhile I'll get a case where people say we need to

1 make some modifications.

2       So if you meet and confer and you disagree and you want  
3 to give me competing proposals, that's fine, as long as you  
4 give them to me in redlined version. In other words,  
5 relined against the standard model protective order. And  
6 then also give me word versions of your competing proposals.  
7 But the homework that you have is that you're going have to  
8 meet and confer -- take a look at it, meet and confer and  
9 see whether you both agree to the model protective order, or  
10 if you have any changes that you want to make. Sometimes  
11 people want to make changes and they agree on the changes  
12 and they just give me one order and I'll look at it and if I  
13 think it makes sense I'll sign it. But you might have  
14 option three, which is each side will have competing  
15 proposals with different changes. But the most important  
16 thing is for me to be able to see a redline copy and to have  
17 it in word, so that whatever I choose I can just adopt  
18 pretty quickly.

19           MS. BURTON: Well the only concern I have is, I  
20 would like the Court to consider the red -- the attorney's  
21 eyes only, with regard to at least the third party  
22 individuals.

23           THE COURT: I would not do that in this case.  
24 There's no reason for that. We deal with this kind of stuff  
25 all of the time in our court, and I will tell you that the

1 court system really disfavors keeping information  
2 confidential. And attorney's eyes only makes no sense,  
3 unless there's a competitor issue or peoples lives are at  
4 risk. So I don't see that in this situation. I understand  
5 that you're concerned about people giving anecdotal  
6 information, but I'm talking about people under the threat  
7 of being killed if they were to disclose information or keep  
8 information confidential and that kind of situation.

9 I've had cases where people have filed suit as a Jane  
10 Doe or John Doe and said, "If I reveal my identity, I or my  
11 family will be killed." In that case, attorney's eyes only  
12 for something like that.

13 But that's the plan for December 16th. Okay?

14 MR. LEVERONI: Understood.

15 THE COURT: So it's going to mean that you guys  
16 have to meet and confer and talk about the protective order.

17 MS. BURTON: Okay.

18 MR. LEVERONI: Understood, your Honor.

19 THE COURT: All right. But otherwise, I am going  
20 to require Mason Tillman Associates to disclose the  
21 information that's in the subpoena. And Mr. Bragorgos, are  
22 you planning to take a deposition again, or you just want  
23 the documents?

24 MR. BRAGORGOS: Well Judge, we would like to take  
25 Ms. Ramsey's deposition for a limited purpose. We can

1 discuss that, you know, with Mrs. Burton and we'll do that  
2 out there, of course, but no, we want the documents,  
3 clearly.

4 THE COURT: Right.

5 MR. BRAGORGOS: They're very important to our  
6 case.

7 THE COURT: Well under the -- under willful reply,  
8 you really -- you can show up and get the document in  
9 person, but if you're going to get them in advance and then  
10 take the deposition, you can work that out as well. And if  
11 there's a fight about that, let me know.

12 MS. BURTON: Okay.

13 THE COURT: Because I'll impeach a Rule 45. I  
14 mean that's my default position is Rule 45.

15 MS. BRAGORGOS: (Indiscernible) Rule 45.

16 THE COURT: Okay. Is there anything else we  
17 should talk about this about this motion? Have I forgotten  
18 anything or left anything out?

19 MS. BRAGORGOS: Judge, thank you for letting me  
20 appear by telephone. I truly appreciate the courtesy.  
21 Thank you, your Honor.

22 THE COURT: Okay.

23 MS. BRAGORGOS: I'm finished.

24 THE COURT: Ms. Burton, do you have anything?

25 MS. BURTON: That's it, thank you.

1 THE COURT: Okay. So I'll wait until December  
2 16th to hear from folks, then I'll tell you what my thinking  
3 is and then I'll issue a written order as soon as I get the  
4 protective order from you folks. Okay?

5 MR. LEVERONI: Thank you.

6 MS. BURTON: Thank you.

7 MR. BRAGORGOS: Thanks, Judge.

8 (Proceedings adjourned at 10:15 a.m.)  
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



Echo Reporting, Inc., Transcriber

Thursday, December 19, 2019